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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DENNIS KOORN, dba SARVIX
10 INTERNATIONAL, LTD., and dba
11 SARVIX, INC.,

12 Plaintiff,
13 v.

14 VICTRON ENERGY, B.V., a
15 Netherlands Limited Liability Company,

16 Defendant.

Case No.: 2:22-cv-00890-JHC

17 DEFENDANT VICTRON ENERGY,
18 B.V.'S REPLY TO PLAINTIFF'S
19 OPPOSITION TO DEFENDANT'S
20 MOTION TO DISMISS PLAINTIFF'S
21 FIRST AMENDED COMPLAINT

22 ORAL ARGUMENT REQUESTED

23 NOTE ON MOTION CALENDAR:
24 OCTOBER 14, 2022

INTRODUCTION

25 Plaintiff's Opposition to Defendant's Motion to Dismiss the First Amended Complaint
26 ("MTD FAC") is not on point. Plaintiff spends most of the opposition arguing that Federal Rules
27 of Civil Procedure ("FRCP"), Rule 17(a)(3) allows him to join the real party in interest and that
28 it instructs the Court not to dismiss an action for failure to prosecute in the name of the real party
29 in interest until a reasonable time has been allowed for the real party in interest to join the action.
30 Plaintiff's arguments are strawmen, however, because the prior complaint and the documents
31 incorporated therein clearly establish that Dennis Koorn (the newly substituted plaintiff) is not

1 the real party in interest in this action. Thus, Plaintiff's FAC did not correct the defects raised in
 2 Defendant's motion to dismiss the initial complaint ("MTD-IC").

3 Moreover, Plaintiff's opposition to the MTD FAC wholly ignores and does not address
 4 Defendant's arguments that (1) Plaintiff's FAC is a sham pleading; (2) Plaintiff was not a party
 5 to the World Intellectual Property Organization arbitration action (the "**WIPO Action**") and thus
 6 lacks statutory standing; and (3) Plaintiff cannot establish personal jurisdiction over the
 7 Defendant. Plaintiff thus concedes the merits of these arguments and thereby establishes that
 8 Defendant's MTD FAC should be granted.

9 **THE PLEADINGS ESTABLISH THAT KOORN IS NOT THE REAL PARTY IN**
 10 **INTEREST**

11 Plaintiff devotes its opposition to Defendant's MTD FAC to convincing the Court that it
 12 simply misidentified the real party interest in its initial pleading and that the FAC now identifies
 13 the proper plaintiff in this action. Plaintiff's arguments are misguided and wrong.

14 As set forth in the MTD FAC, Plaintiff's initial complaint and the FAC (including those
 15 documents incorporated by reference) *contradictorily* assert that Sarvix, Inc., Sarvix
 16 International, LTD, and Dennis Koorn are each individually the registrants of the domain for
 17 Victron.com (the "**Domain Name**"). In particular, in its initial complaint, Plaintiff expressly
 18 averred that Sarvix International, LTD was the registrant of the Domain Name. (Dkt. #1, p 1, lns
 19 18, 28.) Yet, the response filed in the WIPO Action underlying this present case and in the
 20 associated award from the arbitrators in the WIPO Action, each of which are incorporated by
 21 reference into the initial complaint (as well as the FAC), identifies Sarvix, Inc., as the sole
 22 registrant of the Domain Name. (See generally, Dkt. #24, Exh. 2; See also, Dkt. #24, Exh. 3, p1
 23 ("On April 5, 2022, the Registrar transmitted by email to the [WIPO Arbitration and Mediation]
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1 Center its verification response confirming that *the Respondent[, Sarvix, Inc.,] is listed as the*
 2 *registrant and providing the contact details.”))* However, Plaintiff now posts in its FAC, *in*
 3 *express contradiction* to the prior pleadings and the documents incorporated therein, that Dennis
 4 Koorn is the registrant of the Domain Name. (Dkt. #21, p2, lns 2-3.)

5 These are express factual contentions, and thus the problem inherent in Plaintiff’s initial
 6 pleading, as well as the FAC, is not merely the misnaming of the real party in interest. Rather,
 7 Plaintiff has made contradictory factual assertions that must be construed against it.

8 Indeed, it is axiomatic that a plaintiff may not contradict his earlier pleaded factual
 9 contentions in an amended complaint or documents incorporated into the FAC by reference. *Airs*
 10 *Aromatics, LLC v. Victoria’s Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014)
 11 (“A party cannot amend pleadings to directly contradict an earlier assertion made in the same
 12 proceeding.”); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008)
 13 (“We need not accept as true conclusory allegations that are contradicted by documents referred
 14 to in the Complaint.”). Thus, Plaintiff here cannot solve the problems with its pleading by merely
 15 substituting the name of the Plaintiff—because by doing so it is directly contradicting its prior
 16 factual contention as to who is the registrant of the Domain Name.

17 Moreover, the substitution of Dennis Koorn as the plaintiff in this action does not help
 18 Plaintiff, because the documents incorporated by reference into the FAC (i.e., the pleadings and
 19 award in the WIPO Action) clearly identify Sarvix, Inc. as the sole registrant of the Domain
 20 Name. (Dkt. #24, Exhs. 2, 3.) Since Koorn is not the registrant of the Domain Name, he not only
 21 is not the real party interest but has suffered no injury and thus lacks constitutional standing to
 22 bring the claims asserted in this action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61

1 (1992). Accordingly, the FAC does nothing to cure the defects in the initial complaint regarding
 2 constitutional standing.

3 **PLAINTIFF'S OPPOSITION DOES NOT ADDRESS DEFENDANT'S ARGUMENTS IN**
 4 **ITS MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

5 Plaintiff wholly fails to address multiple arguments from the MTD FAC. By failing to
 6 address these arguments, Plaintiff has effectively conceded them. *See, e.g., New Grade Int'l, Inc.*
 7 *v. Scott Techs.*, No. C03-2628 RSM, 2004 WL 5571416, at *5 (W.D. Wash. Nov. 30, 2004), *aff'd*
 8 *sub nom. New Grade Int'l Inc. v. Automatic Sprinkler Corp. of Am./Kiddie Fire Fighting (USA)*,
 9 205 F. App'x 571 (9th Cir. 2006) ("[B]y failing to argue otherwise, plaintiff has conceded that
 10 those elements of the statute are satisfied.")

11 Plaintiff fails entirely to address the argument that the FAC constitutes a sham pleading
 12 insofar as it directly contradicts prior pleadings. (Dkt. # 23, p4-5, lns 12-11.) Plaintiff further
 13 fails entirely to address Defendant's argument that Plaintiff is perpetuating a fraud on the public.
 14 (Dkt. # 23, p5-6, lns 12-20.) Plaintiff further wholly fails to address Defendant's personal
 15 jurisdiction argument. (Dkt. # 23, p8-9, lns 16-17.)

16 Plaintiff conflates Defendant's arguments regarding statutory standing with Defendant's
 17 arguments regarding constitutional standing, and by doing so fails entirely to address the
 18 statutory standing argument. Defendant argued in the MTD FAC that Section 1114(2)(D)(v) of
 19 the Anti-Cybersquatting Consumer Protection Act of 1999 ("ACPA") provides only that a
 20 "domain name registrant whose domain name has been suspended, disabled, or transferred . . .
 21 may . . . file a civil action." (Dkt. #23, p11, lns 3-6.) Plaintiff offers no explanation for the
 22 identification of Sarvix, Inc. as the registrant in the WIPO Action, and not Dennis Koorn.
 23 Instead, Plaintiff seeks to gloss over this argument by describing the WIPO Action as being
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1 “against the registrant of the Domain Name.” (Dkt. # 26, p3, lns 6-7.) Plaintiff fails to reveal that
 2 the registrant of the Domain Name *was not Dennis Koorn*. As Dennis Koorn was not the
 3 Defendant in the WIPO Action and not the registrant of the Domain Name in the WIPO Action,
 4 he cannot invoke the ACPA.

5 **PLAINTIFF INCORRECTLY DISMISSES THE WASHINGTON DBA/ASSUMED-**
 6 **NAME STATUTE AS INAPPLICABLE**

7 Plaintiff cursorily addresses one of Defendant’s capacity arguments insofar as Plaintiff
 8 asserts without support that Plaintiff is not subject to the assumed-name statutes in Washington.
 9 Defendant’s MTD FAC argued in a footnote that, assuming arguendo, even if the Court chooses
 10 to accept Plaintiff’s sham pleadings, the FAC must still be dismissed for lack of capacity because
 11 a dba cannot bring suit in Washington without registering. (Dkt. # 23, p12, fn. 7.) Plaintiff seizes
 12 on this and argues that the Washington Law on capacity expressly applies to the Washington
 13 State Courts, which is therefore irrelevant to a Federal Court applying substantive federal law.
 14 (Dkt. #26, p6, lns 9-13.) Plaintiff, however, ignores Defendant’s reference to Federal Rule of
 15 Civil Procedure, Rule 17(b), which instructs *Federal Courts* to determine capacity of non-
 16 individual and non-corporate parties (such as a non-existent corporation) by referencing the laws
 17 of the forum state. (Dkt. # 23, p12, fn. 7.) Thus, Washington Law on capacity is eminently
 18 relevant to the Federal Court determining the capacity of Plaintiff who is, arguendo, operating
 19 under a fictitious name.

20 Plaintiff additionally makes an argument, again, without support, that the dba/assumed-
 21 name statute is inapplicable to Plaintiff because Plaintiff does not “engage in business in
 22 Washington.” (Dkt. #26, p5, lns 23-25.) However, the statute in question does not limit itself to
 23 “engaging” in business; rather, the statute requires all persons “carrying on, conducting, or
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1 transacting business under any trade name" to register with the State of Washington if they wish
 2 to bring suit in Washington. RCW § 19.80.040. "Transacting" is a relatively broad term and
 3 implies that anyone participating in transactions in Washington State be required to register as a
 4 dba if it wanted to bring suit. This makes perfect sense if the purpose of the law is to protect
 5 those being sued by persons or entities anonymously operating under assumed names; any dba
 6 engaging in transactions in Washington State would reasonably be required to register so they
 7 cannot operate anonymously, and so those haled into the Washington Courts will not be subject
 8 to abusive litigation from unidentifiable plaintiffs. Plaintiff characterizes this as a slippery slope
 9 that would require "tens or hundreds of millions of businesses which obtain services from
 10 Washington-based Amazon.com, Inc., or Microsoft Corp." to register with the State of
 11 Washington. (Dkt. #26, p6, lns 1-3.) Of course, Plaintiff neglects to note that only those
 12 businesses *operating as a dba and bringing suit in Washington* would actually be required to
 13 register, and this is presumably a small number and nowhere near the millions about which
 14 Plaintiff speculates. Thus, in reality, Plaintiff's parade of horribles has no basis, and applying this
 15 law to Plaintiff would not result in absurd consequences.¹ Plaintiff's arguments that this law does
 16 not apply here are incorrect.

17 **CONCLUSION**

18 Plaintiff has failed to address a number of arguments from the MTD FAC (i.e., statutory
 19 standing, personal jurisdiction, and sham pleading), and the FAC can be dismissed based on any
 20 of these unopposed arguments. Further, Plaintiff impermissibly contradicts express factual

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22 ¹ Plaintiff also seeks to invoke *TBF Fin, LLC v. Stay in Home Mrtg., Inc.*, (186 Wash. App. 1008 (2015)) as support
 23 for the contention that application of this law to Plaintiff would cause absurd results; however the cited case
 24 specifically resolved on a finding that the plaintiff did not use a dba/assumed-name, and the Court specifically
 disclaimed any analysis of whether the plaintiff *transacted* business in the state. *Id.* at *3. ("[W]e need not address
 the merits of [the defendant's] claim that [the plaintiff] was 'transacting business' in Washington.").

1 contentions made in the initial complaint and in the WIPO Action documents incorporated into
2 the FAC by reference. After disregarding the contradicting contentions in the FAC, (1) Dennis
3 Koorn is not the registrant of the Domain Name, and thus lacks constitutional standing,
4 (2) Dennis Koorn was not a party to the WIPO Action, and thus lacks statutory standing,
5 (3) Defendant did not consent to personal jurisdiction in any action in Washington State brought
6 by Dennis Koorn (and no other basis is suggested), and (4) Dennis Koorn lacks capacity to sue in
7 the Western District of Washington pursuant to FRCP, Rule 17(b) and Revised Codes of
8 Washington, section 19.80.040.

9 For any or all of the foregoing reasons, Defendant respectfully requests that the Court
10 dismiss Plaintiff's Complaint. And because the above-identified issues cannot be cured by
11 amendment without contradicting the allegations of the initial complaint or the FAC, Defendant
12 respectfully requests that the Court dismiss the Plaintiff's complaint with prejudice. *McDermott*
13 *v. Potter*, No. C13-2011-MJP, 2014 WL 4635444, at *4 (W.D. Wash. Sept. 11, 2014), aff'd
14 (Aug. 10, 2015) *citing United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.2011).

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16 DATED this 14th day of October, 2022.

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